

## **Remarks and Arguments**

Claims 1-20 are pending in this application. Claim 1 has been amended herein to more particularly point out the invention. Support for the amendment may be found throughout the specification, e.g., on page 6, lines 36-38, as well as in figures 2-4.

Claim 5 has been amended herein to more particularly point out the invention. Support for the amendment may be found throughout the specification, e.g., on page 6, lines 20-28, as well as in figures 1-4. Claim 20 has been amended herein to more particularly point out the invention. Support for the amendment may be found throughout the specification, e.g. figures 1-4.

### **35 U.S.C. § 102**

#### **1. The Anticipation Standard**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

#### **2. U.S. Patent No. 5,586,586**

Claims 1, 5, 7, 11, 15 and 20 stand rejected as allegedly anticipated by U.S. Patent No. 5,586,586 (hereinafter "Fiech"). According to the Office, Fiech discloses a a portion of a cartridge for a dispensing system comprising a reservoir, an inlet, an outlet a fill tube and a means for gating gas. Applicants respectfully traverse the rejection.

Applicants first note that Fiech does not disclose a cartridge for dispensing fluid, but rather an underground tank. More importantly, however, the Office states that Fiech discloses "a fill tube 42 that includes a valve as part of dispenser 24" (Office Action dated October 13, 2006, page 2). Claims 1, 5, and 20 all recite in part: a fill valve operatively engaged onto the fill tube assembly wherein the fill valve is in direct fluid communication with the reservoir and is capable of controlling fluid flow from the reservoir into the fill tube. The alleged valve in the dispenser in Fiech is not capable of controlling fluid flow **into** the alleged fill tube. If such a valve even exists (and Fiech does not explicitly disclose one) it would only control the flow out the alleged reservoir, not

into as recited in the claims. Applicants submit that the fluid level in Fiech is controlled by the fluid level in the alleged reservoir.

Moreover Applicants note that claim 1 and its dependencies have been amended to recite: "a measuring tube suitable for measuring a desired volume." Fiech does not disclose this element. Claim 5 and its dependencies have been amended to recite: "a drain valve operatively engaged onto the fill tube assembly suitable for dispensing an aliquot into a receptacle." Fiech does not disclose this element. Claim 20 has been amended to recite: "the reservoir is positioned between the fluid inlet and the fluid outlet." Fiech does not disclose this element.

For each of the reasons recited above Applicants submit that Fiech does not anticipate the pending claims. Withdrawal of the rejection is respectfully requested.

### **3. U.S. Patent No. 5,971,009**

Claims 1, 5, 12, 14, 16 and 18-20 stand rejected as allegedly anticipated by U.S. Patent No. 5,971,009 (hereinafter "Schuetz"). According to the Office, Schuetz discloses a portion of a cartridge for a dispensing system comprising a reservoir, an inlet, an outlet, a fill tube and a means for gating gas. Applicants respectfully traverse the rejection.

Applicants first note that Schuetz does not disclose a cartridge for dispensing fluid, but rather an above ground tank. Moreover Applicants note that claim 1 and its dependencies have been amended to recite: "a measuring tube suitable for measuring a desired volume." Schuetz does not disclose this element. Claim 5 and its dependencies have been amended to recite: "a drain valve operatively engaged onto the fill tube assembly suitable for dispensing an aliquot into a receptacle." Schuetz does not disclose this element. Claim 20 has been amended to recite: "the reservoir is positioned between the fluid inlet and the fluid outlet." Schuetz does not disclose this element. For each of the reasons recited above Applicants submit that Schuetz does not anticipate the pending claims. Withdrawal of the rejection is respectfully requested.

### **4. U.S. Patent Publication No. 2004/0194831**

Claims 1, 5, 6, 12, 13, 16, 17 and 20 stand rejected as allegedly anticipated by U.S. Patent Publication No. 2004/0194831 (hereinafter "Balsdon"). According to the Office, Balsdon discloses a portion of a cartridge for a dispensing system that is part of

an automobile apparatus that dispenses predetermined fluid to an engine comprising a reservoir, an inlet, an outlet, a fill valve, a fill tube and a means for gating gas.

Applicants respectfully traverse the rejection.

Applicants first note that Balsdon does not disclose a fill valve operatively engaged onto the fill tube assembly wherein the fill valve is **in direct** fluid communication with the reservoir as recited by each of the independent claims. In this regard the Office is invited to consider Figure 1 and paragraph [20] of Balsdon which Applicants believe show that the isolation valve (110) separates what the Office alleges to be a “fill valve” from the alleged “reservoir.”

Moreover, Applicants note that claim 1 and its dependencies have been amended to recite: “a measuring tube suitable for measuring a desired volume.” Balsdon does not disclose this element. Claim 5 and its dependencies have been amended to recite: “a drain valve operatively engaged onto the fill tube assembly suitable for dispensing an aliquot into a receptacle.” Balsdon does not disclose this element. Claim 20 has been amended to recite: “the reservoir is positioned between the fluid inlet and the fluid outlet.” Balsdon does not disclose this element. For each of the reasons recited above Applicants submit that Balsdon does not anticipate the pending claims. Withdrawal of the rejection is respectfully requested.

### **35 U.S.C. § 103**

#### **1. The Prima Facie Standard**

MPEP § 2143 provides the standard required to establish a prima facie case of obviousness. “First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references combined) must teach or suggest all the claim limitations.”

The motivation to make the claimed invention and the reasonable expectation of success must both be found in the prior art, not the applicant’s disclosure. *In re Vaeck*, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). The references must be considered as a whole and must suggest the desirability, and thus the obviousness of making the combination. *Hodosh v. Block Drug Co., Inc.*, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir.

1986); MPEP § 2141. The Patent and Trademark Office (PTO) bears the burden of initially establishing a prima facie case of obviousness. MPEP § 2142. The PTO has not met its burden in the instant case.

## **2. Schuetz and Healy**

Claims 2, 3, 6, 8, and 9 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Schuetz in view of U.S. Patent No. 6,554,881 (hereinafter, "Healy"). According to the Office Schuetz discloses a dispenser with a vent to an aseptic area substantially as claimed, but does not disclose the use of a polyethylene filters in the vents. The Office believes, however, that Healy teaches the use of polyethylene filters for the purpose of preventing the spread of contaminants and thus concludes it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the dispenser of Schuetz with the polyethylene filter taught by Healy in order to prevent the spread of contaminants. Applicants respectfully disagree.

Claims 2, 3, 6, 8, and 9 all depend on either claim 1 or claim 5 as amended herein. Accordingly, Applicants first note for the reasons stated above regarding anticipation, that Schuetz does not teach each and every element of the claimed invention. Nothing in Healy cures this defect. Therefore the combination suggested by the Office does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly, Applicants note that a skilled artisan would not be motivated to combine Schuetz with Healy as the Office suggests nor would the same artisan be assured of a reasonable expectation of success in doing so. Applicants note that the dispenser nozzle is open to the atmosphere, thus there would be no reason to use the Healy filter on the reservoir or fill tube assembly to prevent contamination. Moreover, because the dispenser is exposed to the atmosphere using a filter on the vent would not succeed in preventing contamination as the Office suggests. Because a skilled artisan would not have been motivated to combine Schuetz with Healy, nor assured of any reasonable expectation of success in making the suggested combination, at the time the invention was made, the claims are not prima facie obvious.

For all of reasons provided above Applicants respectfully request withdrawal of the rejection.

### **3. Schuetz and Wade**

Claims 2, 3, 6, 8, and 10 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Schuetz in view of U.S. Patent No. 6,073,812 (hereinafter, "Wade"). The Office believes that Schuetz discloses a dispenser with a vent to an aseptic area substantially as claimed, but does not disclose the use of a Teflon filters in the vents. The Office believes, however, that Wade teaches the use of Teflon filters for the purpose of preventing the spread of contaminants and thus concludes it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the dispenser of Schuetz with the Teflon taught by Wade in order to prevent the spread of contaminants. Applicants respectfully disagree..

Claims 2, 3, 6, 8, and 10 all depend on either claim 1 or claim 5 as amended herein. Accordingly, Applicants first note for the reasons stated above regarding anticipation, that Schuetz does not teach each and every element of the claimed invention. Nothing in Wade cures this defect. Therefore the combination suggested by the Office does not teach or suggest all of the claim limitations and thus does not establish a prima facie case of obviousness.

Secondly, Applicants note that the reasons set forth above regarding the both the lack of motivation and the lack of reasonable expectation of success in combining Schuetz with Healy apply equally with regard to the suggested combination of Schuetz and Wade. Because a skilled artisan would not have been motivated to combine Schuetz with Wade, nor assured of any reasonable expectation of success in making the suggested combination, at the time the invention was made, the claims are not prima facie obvious.

For all of the reasons provided above Applicants respectfully request withdrawal of the rejection.

### CONCLUSION

In view of the foregoing remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account.

Respectfully submitted



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